

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE PROSSER,

UNPUBLISHED

Plaintiff,

and

CLIFFORD J. ABBEL, DANIEL ACKER,
WALTER ADAMS, CHARLES DOUGLAS
ALLEN, and HOWARD ANDERSON,

Plaintiffs-Appellants,

v

No. 174221
LC No. 93-67025 CZ

CONSUMERS POWER COMPANY,

Defendant-Appellee.

Before: Michael J. Kelly, P.J., and O'Connell and K.W. Schmidt,* JJ.

O'CONNELL, J. (dissenting).

I respectfully dissent.

The first sentence of MCR 2.207 reads as follows: "Misjoinder of parties is not a ground for dismissal of an action." The majority has affirmed the trial court's decision to grant "defendant's motion for dismissal for improper joinder." Clearly, the trial court's decision is barred by this court rule. If defendant is correct in asserting that plaintiffs' respective claims did not fall within MCR 2.206, which allows the permissive joinder of parties, the proper remedy is severance of the actions, not dismissal. MCR 2.207. Additionally, had the court ordered the actions severed rather than dismissed, the court would have obviated the need for its unorthodox order declaring the statute of limitations tolled, an order of questionable validity.

I would reverse.

* Circuit judge, sitting on the Court of Appeals by assignment.

/s/ Peter D. O'Connell